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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

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5 SECURITIES INVESTOR PROTECTION CORPORATION,

6 Plaintiff,

7 v.

8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

9 Defendants.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 September 9, 2020

17 10:05 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: UNKNOWN

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1 HEARING re Motion of Khronos LLC to Quash Trustees Rule 2004  
2 Subpoena  
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25 DAVID SHEEHAN

1 P R O C E E D I N G S

2 THE COURT: Madoff.

3 MR. OLIVER: Good morning, Your Honor. Jason  
4 Oliver from Baker Hostetler on behalf of the Trustee, Irving  
5 Picard.

6 THE COURT: Okay.

7 MR. FISHER: And Eric Fisher from the Law Firm of  
8 Binder & Schwartz on behalf of Khronos.

9 THE COURT: Are there any other appearances in  
10 this matter? All right. Mr. Fisher, go ahead, it's your  
11 motion.

12 MR. FISHER: Thank you, Your Honor. Following the  
13 briefing between the parties, I think, Your Honor, that the  
14 motion at this point boils down to the question of whether  
15 it's appropriate for the Trustee to use a Rule 2004 subpoena  
16 to discovery information about the liquidation and  
17 dissolution of a Bermuda fund in 2017 and a Cayman fund in  
18 2019.

19 The standard that govern the motion here, first,  
20 of course, is the question of whether there is good cause  
21 for the subpoena. And as part of determining the motion, as  
22 this Court has recognized, the Court has significant  
23 discretion in considering the parameters that should apply  
24 to Rule 2004 discovery.

25 So I want to briefly address the merits and

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1 explain why it's Khronos' position that there is no good  
2 cause for this subpoena. I then want to very quickly touch  
3 on the question of the burden imposed by the subpoena, and  
4 finally address some equities that I think should govern the  
5 Court's exercise of discretion here.

6 So, Your Honor, on the merits. What the Trustee  
7 is clearly looking to do here is find someone to sue as a  
8 subsequent transferee for transfers that occurred back in  
9 2007 and 2008. And the Trustee offers really no basis to  
10 believe that those transfers are traceable through and  
11 beyond liquidations that happened 10 and 11 years after the  
12 initial transfers in question.

13 So because there's just no reason, or at least no  
14 supported reason that's offered, to think that the transfers  
15 are traceable to that extent and over that period of time,  
16 this is not really a legitimate exercise of the Trustee's  
17 investigatory powers.

18 THE COURT: Mr. Fisher, I thought that Prince and  
19 Montpellier were investors in Legacy; is that correct?

20 MR. FISHER: Yes. That is correct, Your Honor,  
21 yes.

22 THE COURT: So any transfers they would have  
23 gotten from Legacy, which presumably I think my recollection  
24 is it invested all or substantially all of its assets in  
25 BLMIS, would presumably emanate from BLMIS, right?

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1 MR. FISHER: Yes, Your Honor. But transfers from  
2 Legacy that occurred in 2007 and 2008 to the Prince assets  
3 and to Montpellier International -- Legacy's only investment  
4 was BLMIS. But what the Trustee is now --

5 THE COURT: But we don't know when those entities  
6 transferred those assets, right?

7 MR. FISHER: Correct. And those entities, Your  
8 Honor, the reason that we put in a reply declaration from  
9 Rafael Mayer of Khronos is to just explain that the Trustee  
10 creates a false picture here of these entities. Montpellier  
11 International, at the time that it redeemed its investment  
12 from Legacy in 2007, it was a fund with a \$3 billion  
13 portfolio value with hundreds of investors. The Legacy  
14 redemption accounted for a tiny fraction of the portfolio  
15 value. And, of course, it only went down from there because  
16 there were no further redemptions from Legacy because Madoff  
17 imploded.

18 And so, you know, the idea that the Trustee wants  
19 to take discovery about distributions that were made to  
20 investors 10 years after the transfer in question I think  
21 just highlights the futility of trying to trace these  
22 transfers. But it's not just traceability. You know, these  
23 entities have dissolved and, you know, Mr. Oliver in his  
24 declaration provides the notices of dissolution for both  
25 entities and the notices say, if you're a creditor, come

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1 identify yourself and, if not, you're not going to be  
2 entitled to get any distribution.

3 So there's an expungement of claims that would  
4 have to be overcome if the Trustee is now going to try to,  
5 you know, identify and trace subsequent transfers into  
6 investors that redeemed from Montpellier and from Prince  
7 respectively, again, 10 and 11 years after the transfers in  
8 question. And there's also no reason to think or suspect or  
9 assert that the investors who got money in those  
10 liquidations did so for anything other than, you know,  
11 redemption of a legitimate investment, good faith and value.

12 And so, this is a kind of last ditch effort to  
13 find somebody to sue, to find a bunch of names, but there's  
14 just no reasonable basis that's offered to think that it  
15 would lead to potentially viable claims that belong to the  
16 BLMIS estate.

17 THE COURT: When were Montpellier and Prince  
18 liquidated?

19 MR. FISHER: Montpellier in 2017 and Prince in  
20 2019.

21 THE COURT: Okay. But in the course of those  
22 liquidations, were any transfers made by the liquidating  
23 trustee or whatever title might be?

24 MR. FISHER: Yes, when the funds were (crosstalk).

25 THE COURT: Okay. So isn't it possible that the

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1 trustee could, although many years have passed, trace  
2 transfers that began with BLMIS through Legacy, through  
3 Montpellier or Prince to the transfers that were made in  
4 2017 or 2019, right?

5 MR. FISHER: I think, Your Honor, it is --

6 THE COURT: It's difficult, that's the trustee's  
7 problem.

8 MR. FISHER: Right, but -- and that's why, though,  
9 we explained that, you know, Montpellier is the funds that  
10 operates with -- you know, it operated with or, you know,  
11 before its dissolution, a \$600 million line of credit,  
12 hundreds of investors, many investments. So, of course, I  
13 mean, that kind of tracing is, you know, a theoretical  
14 abstract possibility, but it's not a real possibility and  
15 the trustee offers no reason to think that that kind of  
16 exercise is a worthwhile use of the estate's resources.

17 And, Your Honor, and that brings me to the  
18 question of burden. It's not only that we think that this  
19 is not a legitimate investigatory exercise and that it's so  
20 overwhelmingly unlikely to lead to any kind of viable claim,  
21 but it's also that it is a very burdensome request. There's  
22 no timeframe in this --

23 THE COURT: Where did you set forth the burden,  
24 other than saying that it's burdensome? I didn't see it in  
25 the papers. I mean, normally, you would see, you know, I

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1 have a hundred servers that I have to serve for this stuff  
2 and I have to search for this stuff, they're all over the  
3 world, it'll take this number of hours and cost this much,  
4 or it's an old computer system that has to be transferred to  
5 a new operating system or something like that. I didn't see  
6 that in your papers.

7 MR. FISHER: Your Honor, we didn't set forth the  
8 burden with that kind of detail. The burden is -- well, two  
9 points on that. I mean, the information -- let's just take  
10 Montpellier as an example -- at this point, it's information  
11 about a liquidation that occurred over a period of time and  
12 concluded three years ago. We did put in information about  
13 the size of the funds and transactions to give a sense that  
14 the information is extremely voluminous, and at this point,  
15 it's also old information that needs to be retrieved if it  
16 were to be produced.

17 But I also think it's appropriate to look at the  
18 burden on Khronos here because this is a subpoena to  
19 Khronos. On a cumulative basis, Khronos was served with a  
20 Rule 2004 subpoena back in 2010. It complied. It produced  
21 20,000 pages of information. It was then --

22 THE COURT: I thought the individuals were served  
23 with a subpoena in 2010.

24 MR. FISHER: So the individuals -- yes, Your  
25 Honor. To be more precise, yes. Rafael Mayer and David

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1 Mayer were with duplicate subpoenas. They didn't and don't  
2 have in their personal possession any information that  
3 relates to Khronos' business and its role in providing  
4 services to Montpellier and Prince. And so, what was  
5 produced to the Trustee -- and it was served at, you know,  
6 Khronos' office address; that's what it was addressed to.  
7 What was produced to the Trustee back in 2010 was  
8 information from Khronos' files about these transfers, and  
9 we provided a chart showing the extraordinary overlap  
10 between that 2010 subpoena and the current subpoena.

11 So we've already complied with the Rule 2004  
12 subpoena that relates to these transfers from Legacy that  
13 occurred in 2007 and 2008. Khronos was then sued with  
14 respect to these transfers. It litigated for five years,  
15 and then ultimately got itself dismissed with prejudice from  
16 the case. It is now a party to the Trustee's appeal to the  
17 Second Circuit from the conclusion of the Legacy case. If  
18 the Trustee prevails, Khronos will be back in the case.

19 So Khronos has been subjected to a pretty  
20 extraordinary burden in this case over a period of 11 years  
21 with respect to the same underlying transfers that originate  
22 in 2007 and 2008, and I think it's appropriate for the Court  
23 to consider that because really, I mean, my client is  
24 responding in a way that it is because it's just truly  
25 reached a point of enough is enough. I struggle to advise

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1 Khronos when it is that they won't have to deal with more  
2 subpoenas and litigation related to the transfers that  
3 occurred so many years ago.

4 THE COURT: Well, depending on how the Second  
5 Circuit rules, you may be back in the case, and I'm sure  
6 you've told you that, so this thing is not over.

7 MR. FISHER: We have told them that, of course,  
8 we've told them that. And, you know, that gets to the  
9 debate that you see in the papers about the pending  
10 proceeding rule. So while it is true that at the moment,  
11 the Trustee does not have subpoena power under Rule 45 and  
12 Khronos is not a party to the litigation subject to  
13 discovery, this is still very much a live case. And if the  
14 Trustee prevails, Khronos may very well find itself a party  
15 in the case subject to party discovery and that feeds the  
16 burden, and I think it also does bring this within the  
17 pending proceeding rule barring (crosstalk).

18 THE COURT: Have you, in the past in 2010, turned  
19 over all the documents relating to the transfers from BLMIS  
20 to Legacy that you have?

21 MR. FISHER: So, Your Honor, back in 2010 -- and  
22 actually, it was a different law firm representing Khronos --  
23 - I, having been through the production now, I know that we  
24 -- I don't know that we turned over or that Khronos turned  
25 over every document, but it certainly turned over documents

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1 sufficient to identify all transfers from Legacy to its  
2 shareholders -- dates, amounts. You know, that information  
3 appears in various ways in the production.

4 And that brings me to the final point, which is  
5 just the equities here, which I touched on in terms of the  
6 ways in which Khronos has been subjected to a lot of  
7 litigation and expense related to what are now very old  
8 transfers. But the Trustee has really sat on his rights for  
9 many years. This information I think was indisputably  
10 provided to the Trustee sufficient to identify these  
11 transfers long before these dissolutions. The Trustee has  
12 never sought more information. The Trustee never argued  
13 that what it received in response to that 2010 subpoena was  
14 inadequate in any way.

15 In fact, the Trustee was able to issue the  
16 subpoena that it did because of information that it received  
17 back in 2010. So for the Trustee to turn to this now 11  
18 years later asking for information that is now more  
19 burdensome to retrieve because of how old it is and that  
20 anyway we don't think is potentially relevant to any  
21 legitimate claims.

22 We think for all those reasons, the subpoena  
23 should be quashed.

24 THE COURT: Thank you. Mr. Oliver.

25 MR. OLIVER: Thank you, Your Honor. Jason Oliver,

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1 Baker Hostetler on behalf of the Trustee. I'd first like to  
2 address Mr. Fisher's point regarding alleged lack of  
3 diligence with respect to the information that's being  
4 sought with respect to the instant subpoena.

5 As Your Honor is aware, in the Legacy Capital  
6 adversary proceeding, a judgment was entered for  
7 approximately \$79 million against Mr. Fisher's client,  
8 Legacy Capital. Legacy Capital consented to that judgment  
9 and the Trustee would have certain preferred --

10 THE COURT: I thought Mr. Fisher represented  
11 Khronos and another firm represented Legacy. Didn't Mr.  
12 Kagan represent Legacy?

13 MR. OLIVER: There was a split in time where Mr.  
14 Kagan represented Legacy, but Mr. Fisher actually signed the  
15 stipulated judgment that was negotiated on behalf of Legacy.  
16 It was actually, Your Honor, after the summary judgment  
17 proceeding was argued, then there was the switch in counsel.  
18 May I continue?

19 THE COURT: Thank you. Yes, please.

20 MR. OLIVER: Okay. So as I was saying, the  
21 Trustee would have preferred to recover the judgment from  
22 Legacy Capital, so it diligently sought post-judgment  
23 discovery starting in January of 2019. As Your Honor is  
24 aware, there's a 30-day period where you cannot seek to  
25 enforce a judgment. So after that expired, the Trustee

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1 diligently went after post-judgment discovery from Legacy  
2 Capital. In response --

3 THE COURT: Did you really think that Legacy would  
4 have money?

5 MR. OLIVER: Well, Legacy, prior to the summary  
6 judgment proceeding, Legacy's counsel -- again, it wasn't  
7 Mr. Fisher -- but did not take a position on whether or not  
8 they were able to satisfy a judgment, and this was discussed  
9 on more than one point. And there's nothing in the amended  
10 complaint that would suggest that Legacy would not be able  
11 to satisfy a judgment in 2019.

12 While we did make an allegation concerning a  
13 single-purpose vehicle invested solely in BLMIS, we did  
14 learn through post-judgment discovery that Legacy is still a  
15 going concern. It's allegedly now owned and controlled or  
16 owned rather by PNB Paribas, so we're not sure exactly, at  
17 least when we served the post-judgment discovery, whether or  
18 not Legacy Capital would be able to satisfy the judgment  
19 that it consented to.

20 So we learned both from Legacy Capital and also  
21 Mr. Fisher's other client, Khronos, who we subpoenaed in  
22 post-judgment discovery for a Rule 45 and Rule 65 discovery  
23 that Legacy was essentially impecunious and that it could  
24 not satisfy the judgment.

25 So with that in mind, the Trustee was then forced

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1 to consider whether or not to bring subsequent transfer  
2 claims and began its investigation into subsequent  
3 transferees. At that point, the Trustee learned through its  
4 own investigation that the subsequent transferees that it  
5 was aware of, both Montpellier International, a Bermuda  
6 entity, and Prince Assets, a Cayman Island entity, had been  
7 dissolved by Mr. David Mayer and Mr. Rafael Mayer who are,  
8 as you know, also the principals of Khronos, Mr. Fisher's  
9 client.

10 So we're now in a situation where we expeditiously  
11 sought to serve the Rule 2004 subpoena to get access to  
12 information that is not in the Trustee's possession  
13 concerning any downstream additional subsequent transfers of  
14 the money that Khronos has admitted and Legacy has admitted  
15 has gone to both Montpellier International and Prince in  
16 2007 and 2008. Now Mr. Fisher --

17 THE COURT: Did you get -- wait, before you go on.  
18 You got the information of the transfers obviously from  
19 BLMIS to Legacy. And in 2010, did you get the information  
20 relating to transfers from Legacy to other entities or  
21 persons?

22 MR. OLIVER: We did receive information from the  
23 Mayers in their production that's similar to the documents  
24 that Mr. Fisher attached to his declaration in support of  
25 this motion. But, yes, we did receive some information

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1 showing receipt of transfers.

2 THE COURT: So to make it less burdensome, in Mr.  
3 Fisher's words, how do you separate out and relieve them of  
4 the obligation to produce documents they've already  
5 produced?

6 MR. OLIVER: Well, Your Honor, we are looking for  
7 additional subsequent transfers that either result in (a)  
8 from the liquidation that Mr. Fisher discussed in detail or  
9 (b) at any time after the subsequent transfers to  
10 Montpellier and Prince were received in the first instance  
11 and potentially subsequently transferred or distributed.

12 Mr. Fisher said --

13 THE COURT: So you know -- wait, wait, stop. So  
14 you know or you've gotten the information already about the  
15 transfers from Legacy to Montpellier and Prince?

16 MR. OLIVER: That's correct.

17 THE COURT: You're looking for transfers from  
18 Prince and Montpellier --

19 MR. OLIVER: -- downstream.

20 THE COURT: -- (crosstalk) transfers.

21 MR. OLIVER: That's absolutely correct, Your  
22 Honor.

23 THE COURT: Okay.

24 MR. OLIVER: So that is the basis of our request  
25 for discovery and that is the basis of the request that was

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1 clarified to Mr. Fisher starting on October 3rd -- excuse me  
2 -- August 3rd of this year when we had our meet and confer.  
3 In addition, you know, we talked about -- Mr. Fisher talked  
4 about burden and, you know, the fact that Khronos is  
5 involved in litigation. But he has not addressed the fact  
6 that it's his clients, the Mayers, who are actually the  
7 individuals responsible for the voluntary liquidation and  
8 dissolution of the two subsequent transferees that have been  
9 identified in their very production.

10 Again, Khronos in its papers admits that there was  
11 receipt of transfers from Legacy to those two subsequent  
12 transferees in 2007 and 2008, but does not address the fact  
13 that the Mayers went ahead and dissolved these entities with  
14 knowledge and a production to the Trustee setting forth the  
15 transfers of those to the subsequent transferee without  
16 providing any notice whatsoever to the Trustee concerning  
17 its desire to liquidate those entities.

18 So I think the --

19 THE COURT: Why would the Trustee get notice;  
20 you're saying the Trustee was a creditor of these entities?

21 MR. OLIVER: Well, Khronos and the Mayers were on  
22 notice of a potential claim where the Trustee could be a  
23 creditor, and there was never a situation where, despite a  
24 document production showing evidence of transfers, where  
25 there was any preservation of that information or any notice

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1 whatsoever to the Trustee as a potential creditor that would  
2 use the transfers for the --

3 THE COURT: Wait, wait, wait. Do the liquidation  
4 rules in Bermuda and Cayman Island require that the  
5 liquidators give notice to the BLMIS Trustee?

6 MR. OLIVER: That's something that we'd have to  
7 examine under foreign law. And I would make one other point  
8 that Mr. Fisher assumes that, you know, a claim would be  
9 futile once an entity is dissolved and liquidated, but there  
10 have been instances where companies or foreign entities are  
11 reinstated. As Your Honor might recall in the other BLMIS  
12 matter involving HSBC BA worldwide is an example where there  
13 was a reinstatement of a dissolved and struck off entity.

14 So, again, Mr. Fisher is essentially arguing, like  
15 a motion to dismiss, that a claim would be futile where  
16 there is no binding determination that there's a full  
17 expungement of claims.

18 THE COURT: Okay.

19 MR. OLIVER: And one other point, Your Honor.

20 THE COURT: Okay.

21 MR. OLIVER: Khronos also served as the  
22 administrator for at least Montpellier and Prince through  
23 2016. We have sought in our subpoena, in addition to  
24 documents, you know, the instructions have a request  
25 specifically in the event that the recipient under Rule 2004

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1 subpoena no longer have documents or information concerning  
2 the targeted questions in the Rule 2004 discovery. There's  
3 a specific instruction that requires the recipient to  
4 identify the information and the new individual or the new  
5 repository of that information.

6 And even through the full briefing that we have  
7 with respect to Khronos' motion to quash, we still don't  
8 know the identity of the third party that is the  
9 administrator of Prince; all we do know is that David Mayer  
10 was the liquidator. And there was no discussion with  
11 respect to either burden to Khronos or the Mayers as to why  
12 David Mayer would not be in a position to produce documents  
13 as the liquidator of the Prince proceeding.

14 THE COURT: I thought that -- I thought it was  
15 Prince where it was stated that they no longer have the  
16 documents.

17 MR. OLIVER: Khronos has taken the position that  
18 they no longer have the documents. But Khronos has also  
19 taken the position that a subpoena in 2010 to the Mayers as  
20 individuals, as Your Honor pointed out, resulted in what Mr.  
21 Fisher believes was the files of Khronos being produced.

22 We submit that the converse is also true since  
23 David Mayer is a principal of Khronos, he certainly has  
24 access to the liquidation files and information concerning  
25 transfers that resulted from the liquidation as he served as

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1 the liquidator of that proceeding in the Cayman Islands.

2 THE COURT: Okay. Is there anything else?

3 MR. OLIVER: I would make a comment, Your Honor,  
4 that this discovery proceeding has been going on for some  
5 time. We tried to expeditiously bring it to Your Honor's  
6 attention with the help of Mr. Fisher and the Court so that  
7 we wouldn't be on a motion omnibus date as it is urgent.

8 And to the extent that Your Honor is going to  
9 award discovery, we'd ask that a document production  
10 deadline be added to a proposed -- added to the order  
11 requiring Khronos to provide documents within seven days of  
12 any decision.

13 THE COURT: Thank you. Mr. Fisher, I will give  
14 you the last word.

15 MR. FISHER: Thank you, Your Honor. Just really  
16 briefly respond to --

17 THE COURT: If you want it.

18 MR. FISHER: I'll take it, thank you.

19 THE COURT: All right.

20 MR. FISHER: Just to respond to something Mr.  
21 Oliver has pointed very quickly. It's worth noting that the  
22 Trustee, back in 2010 after receiving the first 2004  
23 subpoena information, did sue a whole host of subsequent  
24 transferees and then voluntarily discontinued the action  
25 against them. The Trustee never sued, never threatened to

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1 sue, never identified himself as having a claim against  
2 Montpellier International or Prince Assets LBC.

3 Of course, there's no foreign law affidavit in  
4 front of the Court, but I think the insinuation that there  
5 was anything improper about that or that notice was required  
6 is just -- isn't right.

7 Mr. Oliver described Legacy as a going concern.  
8 It isn't and never was a going concern after Madoff  
9 collapsed because all it ever had was its Madoff accounts.  
10 And the information that was provided to the Trustee in  
11 post-judgment discovery showed the Trustee that Legacy's  
12 assets as of today are essentially exactly what they were in  
13 December 2008 when Madoff collapsed. Nothing has changed  
14 and the Trustee knew or should have --

15 THE COURT: Well, but he's asking really or the  
16 sense I get is that the Trustee is seeking information  
17 relating to transfers by Montpellier and Prince as late as  
18 2019 in the case of one of them. He's not interested in  
19 transfers -- I don't think he's interested in transfers from  
20 Legacy to Montpellier and Prince. I asked him that question  
21 and he said that he was interested in post Montpellier and  
22 Prince transfers, you know, the subsequent transfers.

23 MR. FISHER: Understood, Your Honor. But that's  
24 why I don't think that there's really a rational basis for  
25 the request, because you're talking then about distributions

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1 that happened in 2017 and 2019 respectively without knowing,  
2 you know, the hundreds of transactions and all the money in  
3 and out that occurred over the 10 or 11 years between the  
4 initial transfer and this subsequent transfer. So I don't  
5 see how that --

6 THE COURT: How does the Trustee know that -- how  
7 does the Trustee know that without discovery?

8 MR. FISHER: Because if he's looking -- if the  
9 Trustee is looking for information about a liquidation  
10 occurring 10 or 11 years later, he's just got to offer some  
11 theory as to why that's connected to something that happened  
12 so many years before in a fund where there now is evidence  
13 in the record that, you know, this is a substantial fund  
14 with lots of transactions and a very substantial value  
15 before its dissolution.

16 And, Your Honor, finally just to set the record  
17 straight. David Mayer is no longer an officer or in any  
18 position of control at Khronos, LLC; it's Rafael Mayer who  
19 is. And starting at the end of 2016, as we've told the  
20 Trustee and as is before the Court, Khronos no longer  
21 provided any services to Prince Assets LBC or any Prince  
22 entity. And, you know, I'd be happy to provide the Trustee  
23 with whatever information I have about who did provide  
24 services to Prince Assets.

25 THE COURT: But that should have been done before

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1 any motion was made. Look, it seems to me -- I'm not going  
2 to prejudge the futility of information about transfers that  
3 occurred after 2010, because that's what we're really  
4 talking about since the last subpoena spoke as of 2010.

5 You may be right, Mr. Fisher. But, you know, the  
6 Trustee's theory is BLMIS made transfers to Legacy, Legacy  
7 made transfers to Montpellier and Prince, and it's  
8 reasonable to assume that in the course of the liquidations,  
9 Montpellier and Prince, if not before then, made transfers  
10 to its investors and/or its creditors. So it's very  
11 difficult to prejudge that.

12 In terms of burden, you really haven't told me  
13 what the burden is other than the information is old, you've  
14 told me that, or at least I thought I read in the papers  
15 that you don't have any information relating to Prince. If  
16 you don't have any information, then you can satisfy the  
17 Trustee to that with a brief deposition or whatever the  
18 person who would know that; that's really the end of it.

19 But it seems to me that the Trustee is entitled to  
20 examine into transfers made by Montpellier and Prince under  
21 Rule 2004 because there's subsequent transferees and he has  
22 a year from the date of the judgment, which I guess was  
23 November 2019 based on what the papers say, to try and trace  
24 those transfers.

25 You may be right; it may be a waste of, you know,

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1 the Trustee's or SIPC's money. But it seems to me that if  
2 that's what the Trustee wants to do, that's what the Trustee  
3 can do. I mean, if Legacy doesn't really have any money, I  
4 don't know why it's fighting the judgment so hard, but so be  
5 it, or why the case isn't simply settled.

6 So, I mean, bottom line is the Trustee can  
7 certainly examine into any transfers made by Montpellier or  
8 Prince. Was the information regarding the transfers by  
9 Montpellier and Prince produced in response to the 2010  
10 subpoena, Mr. Fisher?

11 MR. FISHER: I'm sorry, Your Honor. Transfers  
12 from Montpellier and Prince to its investors?

13 THE COURT: Yeah, to whoever.

14 MR. FISHER: No.

15 THE COURT: Well, investors/creditors, okay. So  
16 that was never produced, so it seems to me that the Trustee  
17 is entitled to documents relating to transfers made by  
18 Montpellier and Prince to investors, to creditors, to  
19 anybody.

20 You know, and I will say, Mr. Fisher, you said you  
21 don't -- you know, it's futile for the Trustee to try and  
22 trace, but I don't know what the tracing rules are in the  
23 Cayman Islands or Bermuda, so I really can't say whether or  
24 not it's futile.

25 With respect to some of the stuff that's being

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1 requested, Mr. Oliver, I don't understand how it relates to  
2 subsequent transfers. I'm just looking through your  
3 requests. I mean, number four, documents or communications  
4 concerning procedures, guidelines and policies for  
5 investing, redeeming or monitoring BLMIS investments though  
6 Legacy Capital. Why are you asking that?

7 MR. OLIVER: Well, we'd be interested to see if  
8 there was any changes to any of the policies regarding,  
9 again, the subsequent subsequent transfers, especially post-  
10 2010.

11 THE COURT: For what? You're looking, trying to  
12 identify subsequent transfers. I don't know why these  
13 policies have to be produced. You're entitled to documents  
14 relating to subsequent transfers by Montpellier and Prince.  
15 If you can trace them back to BLMIS and find someone you can  
16 sue, well, you're entitled to under Section 550.

17 MR. OLIVER: Right. Your Honor, I agree with your  
18 assessment. That particular document request was to get a  
19 complete picture of the situation regarding any changes in  
20 guidelines or procedures that might affect later in time.  
21 But I do agree with Your Honor with respect to the  
22 information we exactly -- we precisely need, that 550 would  
23 provide us the ability to look into the subsequent  
24 subsequent transfers.

25 THE COURT: I'm just looking through some of these

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1 other requests. Well, why don't you see if you can come up  
2 with a formulation of what I've just said, you know,  
3 specifically does the transfer documents -- I don't know  
4 about some of this other stuff. Oh, here it is.

5 I'm looking at 15, 16 and 17: 15 is documents  
6 concerning Prince's credit facility; 16 is documents  
7 concerning a pledge agreement; 17 is documents concerning  
8 relationship between all investors and Prince. Either  
9 somebody got a transfer, or they didn't get a transfer.  
10 What difference does it make about the relationship with the  
11 credit facilities?

12 MR. OLIVER: Those specific document requests  
13 would be related to identifying assets that might be pointed  
14 out in those documents. And also, it might identify the  
15 identities of other subsequent transferees.

16 THE COURT: Okay. But that's swept in with all  
17 documents relating to transfers by Montpellier and Prince  
18 and any transfers of their transferees.

19 MR. OLIVER: Agreed.

20 THE COURT: In other words, the requests should be  
21 tailored to following the money.

22 MR. OLIVER: Yes, Your Honor. We can certainly  
23 work together to put together a proposal.

24 THE COURT: Okay, that's what I'm authorizing.  
25 And I agree, Mr. Fisher, that this should be done

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1 expeditiously considering that the statute of limitations  
2 under 550 is about to run in another couple of months.

3 MR. FISHER: Understood.

4 THE COURT: You can submit a consensual order or  
5 settle an order on notice, Mr. Oliver, if you can't agree.

6 MR. OLIVER: Thank you very much, Your Honor.

7 THE COURT: Thank you.

8 MR. OLIVER: Have a good day.

9 THE COURT: You're excused. Thank you.

10 MR. FISHER: Thank you, Your Honor.

11 THE COURT: Thank you.

12

13 (Whereupon these proceedings were concluded at  
14 10:41 a.m.)

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

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*Sonya M. Ledanski Hyde*

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Sonya Ledanski Hyde

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25 Date: September 10, 2020